


Tfw 3763

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	Application Number	10/089,831	
	Filing Date	April 4, 2002	
	First Named Inventor	Levin	
	Art Unit	3763	
	Examiner Name	M. Hayes	
Total Number of Pages in This Submission	6	Attorney Docket Number	BET-105US

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Nathan W. Levin, Daniel Schneditz, and Fansan Zhu
Appl. No. : 10/089,831
Filed : April 4, 2002
For : METHODS AND APPARATUS FOR MEASURING THE
VOLUME OF FLUID IN THE PERITONEAL CAVITY
Examiner : M. Hayes
Group : 3763

RESPONSE

This is in response to the non-final Office Action dated September 23, 2005. No extension of time is believed to be necessary for the filing of this Response, but if an extension of time is required, applicants request that this be considered a petition therefor. The Director is hereby authorized to charge any fees which may be required for such an extension to Deposit Account No. 11-1158.

In the September 23rd Office Action, the Examiner indicated that:

- (1) Claims 1-33 and 40 are allowed; and
- (2) Claims 34-39 are rejected for allegedly being directed to non-statutory subject matter under 35 U.S.C. 101.

With regard to the §101 rejection the Examiner wrote:

The claims do not recite an invention that produces a useful, concrete, and tangible result. Claims 35, 36, 38, and 39 merely recite an algorithm for calculating a constant. Claims 34 and 37 only recite an equation for calculating volume, lacking a recitation of its accomplishment of a practical application. (9/23/05 Office Action at page 2.)

Applicants respectfully disagree with the Examiner's characterization of their claims.

Applicants' Claims 34-39 are not concerned with the calculation of some abstract volume or constant, but rather are concerned with the calculation of a very